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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,359	10/28/2003	Daniel W. Van Vleet	1995	5995

24264 7590 07/28/2004

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EXAMINER

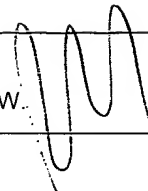
YEUNG, JAMES C

ART UNIT PAPER NUMBER

3749

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/695,359	Applicant(s) VAN VLEET, DANIEL W. 	
	Examiner James C Yeung	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-27 is/are allowed.
- 6) ☒ Claim(s) 1-7, 10, 11, 14-16, 28 and 31-34 is/are rejected.
- 7) ☐ Claim(s) 8-9, 12-13, 29-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/12/04 +4/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: 626 (page 13, line 19). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 6, 10-11, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gieb. The structure as claimed is fully anticipated by Gieb.

In particular, Gieb shows in Figs. 1-5, an outdoor fireplace comprising:

(A) a fire pan (10) adapted to be supported in an upright orientation on a support surface (G), the fire pan (10) having an upper rim (11) and a pan interior (not numbered);

(B) at least one diffuser element (21) disposed in the pan interior of the fire pan (10) and secured thereto when in an assembled state; and

(C) a gas injector (20) extending into to the interior of the fire pan (10) when in the assembled state and operative to introduce vaporized fuel into the pan interior when connected to the source of fuel, the gas injector (20) terminating in a gas outlet (25) located proximately to the diffuser element (21) such that vaporized fuel introduced into the pan interior is incident on a region adjacent to the diffuser element (21), the diffuser element thereby operative to disperse the vaporized fuel about the fire pan interior when the gas introduces the vaporized fuel therein.

4. Claims 1-6, 10, 14-15, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell. The structure as claimed is fully anticipated by Campbell.

In particular, Campbell shows in Figs. 1-5, a fireplace log burner comprising:

(A) a fire pan (10) adapted to be supported in an upright orientation on a support surface (34), the fire pan (10) having an upper rim (11) and a pan interior (not numbered);

(B) at least one diffuser element (24) disposed in the pan interior of the fire pan (10) and secured thereto when in an assembled state; and

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(C) a gas injector (20) extending into to the interior of the fire pan (10) when in the assembled state and operative to introduce vaporized fuel into the pan interior when connected to the source of fuel, the gas injector (20) terminating in a gas outlet (22) located proximately to the diffuser element (24) such that vaporized fuel introduced into the pan interior is incident on a region adjacent to the diffuser element (24), the diffuser element thereby operative to disperse the vaporized fuel about the fire pan interior when the gas introduces the vaporized fuel therein.

In regard to claims 5 and 34, Campbell discloses in col. 3, line 4 that the particular material is vermiculite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Cunningham.

Cunningham teaches the use of a lid (14, Fig. 4) of the purpose of closing an open top of a firebox.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fire pan of Campbell with a lid such as taught by Cunningham in order to close the open top of the fire pan.

7. Claims 8-9, 12-13, and 29-30 are rejected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C Yeung whose telephone number is 703 308-1047. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JY
July 26, 2004


James C. Yeung
Primary Examiner